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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 162

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

GREGORIO CHAVEZ AND JOSE MARIA CHAVEZ.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW MEXICO.

BRIEF OF APPELLEES.

DAVID A. GRAMMER,
Counsel for Appellees.

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Statement of the Case.

The defendants, Gregorio Chavez and Jose Maria Chavez, were indicted by the Federal grand jury on or about February 18, 1933, under six counts, which charged them with the larceny of livestock from certain Indians, residents of the Pueblo of Isleta, situated in the State of New Mexico (Trans. 1). On March 11, 1933, the defendants, by their attorney, filed a Motion to Quash or Demur (Trans. 3). On March 17 the order of the district court (Trans. 4) was filed, sustaining the demurrer and dismiss-

ing the cause for want of jurisdiction. The Government appeals direct to the Supreme Court of the United States.

Introduction.

In order that the points relied upon by the appellees may be most clearly presented for the consideration of the Supreme Court, the following rather informal statement is made:

The indictment charges an offense by citizens of the State of New Mexico, namely, larceny. The property alleged to have been taken was the property of certain Pueblo Indians, residents of the Pueblo of Isleta, located in the State of New Mexico. For the sake of argument it is assumed that the property, if and when taken, was taken within the exterior bounds of the Indian Pueblo, and removed therefrom. Now we understand that the appellant contends that by virtue of the extension of jurisdiction of the Federal Criminal Laws to the Indian Country under R. S. 2145, and by virtue of the reservation of jurisdiction in the Federal Government over the Indian Country and the inclusion especially of the Pueblo lands in such reservation—that the Federal Government has jurisdiction over this particular action. We answer such a contention with the following proposition: That the Enabling Act reserves jurisdiction in the Federal Government over two offenses, and over two offenses only, which are the sale, etc., of intoxicating liquor to Indians and the introduction of intoxicating liquor into the Indian Country.

Brief of the Argument.

I.

UNDER THE ENABLING ACT OF CONGRESS FOR THE STATE OF NEW MEXICO (36 Stat. 557) THE LANDS WITHIN THE ISLETA PUEBLO GRANT IN THE STATE OF NEW MEXICO ARE NOT INDIAN COUNTRY WITHIN THE CONTEMPLATION OF SECTION 2145, REVISED STATUTES, U. S. CODE, TITLE 25, SEC. 217.

II.

THE OFFENSE OF LARCENY COMMITTED WITHIN AN INDIAN PUEBLO BY A PERSON NOT AN INDIAN AGAINST THE PERSONAL PROPERTY OF A PUEBLO INDIAN IS NOT AN OFFENSE AGAINST THE UNITED STATES OF WHICH THE UNITED STATES DISTRICT COURT WOULD HAVE JURISDICTION.

III.

THE RELATION OF THE FEDERAL GOVERNMENT TO THE PUEBLO INDIANS IS THAT OF GUARDIAN AND WARD.

ARGUMENT.

I.

Under the Enabling Act of Congress for the State of New Mexico (36 Stat. 557) the lands within the Isleta Pueblo Grant in the State of New Mexico are not Indian country within the contemplation of Section 2145, Revised Statutes, U. S. Code, Title 25, Section 217.

II.

The offense of larceny committed within an Indian Pueblo by a person not an Indian against the personal property of a Pueblo Indian is not an offense against the United States, of which the United States District Court would have jurisdiction.

Points I and II will be argued together.

The status of the Pueblo Indians and their lands was

fully established in the case of *United States* v. *Joseph*, 94 U. S. 619. The Joseph case was decided before the adoption of the Enabling Act. The Joseph case, we submit, established the rule that the State had the power as well as the duty to enforce the criminal code in the Indian Pueblos, and that the Federal Government did not. In the case of *United States* v. *Sandoval*, 231 U. S. 28, 58 L. Ed. 107, the venerable Justice Van Devanter discussed very clearly the status of the Pueblo Indian and distinguished the decision of the court in the latter case from the Joseph case. We point out that the decision in the Joseph case was never set aside; that the case of *United States* v. *Sandoval, supra,* did not decide that the criminal laws of the State were not in force within the Indian Pueblos; and the decision of the court in *United States* v. *Candelaria, supra,* has not yet been overruled. The latter decision then is still the law of the land, except as changed by statute. At the time of the decision in the Joseph case and again in the Sandoval case the locality concerned was a Federal Territory and not a Sovereign State. The case of *United States* v. *Candelaria, supra,* was a case involving the statute which prohibits the sale of liquor to Indians and its introduction into the Indian Country—wherein the court decided that such a Federal Statute did not apply to the Pueblo Indians nor their land. This latter point is important in that it definitely decides that the Indian Pueblos of New Mexico are not "Indian Country" within the meaning of R. S. 2145.

In the Enabling Act (36 Stat. 557) Section II, we read in part:

> "First, * * * that * * * the sale * * * of intoxicating liquors to Indians and the introduction of liquors into Indian Country, which term shall include all lands now owned or occupied by the Pueblo Indians of New Mexico, are forever prohibited."

"Eighth, that whenever hereafter any of the lands contained within Indian Reservations * * * in said proposed State shall be * * * sold * * * they shall be subject for a period of twenty-five years after such * * * sale * * * to all the laws of the United States prohibiting the introduction of liquor into the Indian Country; and the terms 'Indian' and 'Indian Country' shall include the Pueblo Indians of New Mexico and their land."

That Enabling Act was required to be accepted by the people of this State as a condition precedent to the attainment to statehood. And the people, in Article 21, Sec. 1, of their State constitution adopted in pursuance of the requirements as set forth in the Enabling Act, reads in part as follows:

"Section I. * * * the sale * * * of intoxicating liquors to Indians, the introduction of such liquors into the Indian Country, which term shall also include all lands owned, or occupied by the Pueblo Indians of New Mexico * * * are forever prohibited."

And Section 8 of Article 21 of the State Constitution reads in part as follows:

"Section 8. Whenever hereafter any of the lands contained within Indian reservations * * * in this State shall be * * * sold * * * they shall be subject for a period of twenty-five years after such * * * sale, * * * to all the Laws of the United States prohibiting the introduction of liquor into the Indian Country; and the terms 'Indian' and 'Indian Country' shall include the Pueblo Indians of New Mexico and the lands owned or occupied by them. * * *"

We submit to the Court that, construing the provisions of the Enabling Act with the interpretation of the same as imposed in our State Constitution, the intention of the people of the State of New Mexico was to confer no greater

jurisdiction over the Pueblo Indian lands than that necessary to enforce the Federal Laws with reference only to the sale of intoxicating liquor to Indians, and the introduction of intoxicating liquor into the Indian Country. The offense charged in the case at bar is that of larceny. We submit that the offense of larceny was not made an offense against the Federal Government by the Enactment of Sec. 451 par. 3, Title 18 U. S. C.; Sec. 511 Title 18 (Criminal Code Sec. 311) U. S. C.; Sec. 217 Title 25 U. S. C.; or by Sec. 2 par. 8 of the Enabling Act (36 Stat. 557), or by all of them.

It is plain that the extension of the definition of the words "Indian" and "Indian Country" by Congress in the Enabling Act, cited above, was for the purpose only of enforcing the Laws of the Federal Government prohibiting the sale of intoxicating liquor to Indians and the introduction of intoxicating liquor into the Indian Country AND THE SUPREME COURT OF THE UNITED STATES, IN EFFECT, HAS SO HELD.

I wish to repeat that last statement for emphasis; for I consider it conclusive in the disposition of this case. I say that the Supreme Court, in effect, has held that the extension of the definition of the term "Indian Country" is for the purpose only of extending the application of the Federal Laws prohibiting the sale of intoxicating liquor to Indians, and the introduction of intoxicating liquor into the Indian Country. In the Supreme Court case of *United States* v. *Candelaria*, 271 U. S. 432, 70 L. Ed. 1023 on p. 1026 the Supreme Court, in its opinion interpreting the Enabling Act I read as follows:

> "The purpose of Congress to subject the Pueblo Indians and their lands to that legislation, if not made certain before the decision in the Joseph case, was made so in various ways thereafter. Two manifestations of it are significant. A decision of the territorial court in 1904 holding their lands taxable was promptly fol-

lowed by a Congressional Enactment annulling the taxes already levied and forbidding further levies; AND A DECISION OF THAT COURT IN 1907 CONSTRUING THE STATUTE WHICH PROHIBITS THE SALE OF LIQUOR TO INDIANS AND ITS INTRODUCTION INTO THE INDIAN COUNTRY AS NOT INCLUDING THESE INDIANS OR THEIR LANDS, WAS SHORTLY FOLLOWED BY AN ENACTMENT DECLARING THAT THE STATUTE SHOULD BE CONSTRUED AS INCLUDING BOTH'' (Citing the Enabling Act).

III.

The relation of the Federal Government to the Pueblo Indians is that of guardian and ward.

No extended argument will be here presented upon the common law relation of guardian and ward. It is sufficient to say that the arbitrary adoption of the relationship, or attitude, or status of guardian, on the part of the Federal Government towards these Indian Pueblos, confers no extra-constitutional powers or status upon the Federal Government, by which it may enforce its Criminal Laws upon the citizens of the State of New Mexico.

By analogy: If I were a resident of the State of Texas, and guardian of a minor child who is a resident of the State of Colorado and who owns personal property therein; and if some trespasser stole some chattel from my ward—would I, like Judge Lynch of Virginia, assume the powers of a Sovereign State by virtue of my relationship to the injured ward, and summarily execute the offending thief? Or must I, as any other citizen, invoke the Supreme Law of the Land and prosecute the offender in the Criminal Courts of the State of Colorado? The answer is most obvious.

For the exercise of the duties of guardian is not a function of Government, but a private duty—a proprietary act, or series of acts, so to speak;—and the Federal Government, within the boundaries of a Sovereign State, stands

upon the same footing, and is entitled to the same remedies of law, for the enforcement of rights, and the punishment of wrongs done to its wards, as any other private person.

By anology again: The Federal Government, through its Veteran's Bureau, looks after the minor children of deceased world war veterans. It has special attorneys retained for that purpose, to appear on behalf of the Government in the name of these minor children in Probate Courts of the several states of the Union; present wills for probate, offer estates for administration, pray for the appointment of executors, administrators, guardians, appraisers, etc.,—I feel that the analogy has been carried far enough to maintain the point.

We invite the attention of the court to the concluding paragraph in the opinion in the case of *United States* v. *Joseph, supra:*

> "If the defendant is on the lands of the Pueblo, without the consent of the inhabitants, he may be evicted or punished civilly, by a suit for trespassing, according to the laws regulating such matters in the Territory. If he is there with their consent or license, we know of no injury which the United States suffers by his presence."

In the civil case of *Surplus Trading Company* v. *Cook,* 281 U. S. 647-658, the status of Government lands and the exercise of police power by the State on lands owned by the Federal Government, is discussed. The first syllabus or headnote follows:

> "Ownership and use for public purposes by the United States of lands within a State, without more, do not withdraw the lands from the jurisdiction of the State."

In the opinion, on page 651 I read:

> "A typical illustration is found in the usual Indian reservation set apart within a State as a place where the United States may care for its Indian wards and lead them into habits and ways of civilized life. Such reservations are part of the State within which they lie and her laws, civil and criminal, have the same force therein as elsewhere within her limits, save that they can have only restricted application to the Indian wards * * *."

How much stronger the argument here advanced appeals to reason, when it is realized that the lands of the Isleta Pueblo are owned in fee simple, as community property by the Indians themselves, and are not "reservations" but private property.

We respectfully urge that the decree of the court below, dismissing the indictment, should be sustained.

Respectfully submitted,

DAVID A. GRAMMER.